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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

AMBER LEAH PENACHO,

Defendant and Appellant.

E046311

(Super.Ct.No. FMB800062)

OPINION

APPEAL from the Superior Court of San Bernardino County. William Jefferson Powell IV, Judge. Affirmed.

James M. Crawford, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, and Peter Quon, Jr. and Angela Borzachillo, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant and defendant Amber Leah Penacho pled guilty to one count of vandalism. (Pen. Code,<sup>1</sup> § 594.) The court granted probation for a period of three years, subject to certain terms and conditions. On appeal, defendant argues that the probation condition requiring her to notify her probation officer of the presence of any pets at her residence is invalid and unconstitutional. We disagree and affirm.

### FACTUAL AND PROCEDURAL BACKGROUND<sup>2</sup>

On January 30, 2008, defendant attacked her aunt with a broken mirror. When the police arrived at the residence, defendant attempted to flee and refused to comply with the officer's orders, so the officer had to use a Taser gun to stop her.

Defendant was charged with assault by means likely to produce great bodily injury (§ 245, subd. (a)(1), count 1), cutting a utility line (§ 591, count 2), and resisting an officer (§ 148, subd. (a)(1), count 3). She entered into a plea agreement and agreed to plead guilty to one count of vandalism (§ 594, subd. (b)(1)), in exchange for a grant of probation for three years under certain conditions and the dismissal of the remaining counts. At the sentencing hearing, defense counsel objected to some of the probation conditions recommended in the probation report, but not the probation condition that is at issue in this appeal, which required defendant to “[k]eep the probation officer informed

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<sup>1</sup> All further statutory references will be to the Penal Code unless otherwise indicated.

<sup>2</sup> The facts are taken from the probation report.

of place of residence, cohabitants and pets, and give written notice to the probation officer twenty-four (24) hours prior to any changes” (the pet probation condition).

### ANALYSIS

#### The Court Properly Imposed the Pet Probation Condition

Defendant argues that the court abused its discretion in imposing the pet probation condition because it is invalid under *People v. Lent* (1975) 15 Cal.3d 481, 486 (*Lent*), and because it is unconstitutionally overbroad because it includes pets that could not be a threat to probation officer safety. In *People v. Olguin* (2008) 45 Cal.4th 375, 380 (*Olguin*), the Supreme Court recently affirmed this court’s conclusion that the pet probation condition is reasonably related to the supervision of a probationer and hence to his or her rehabilitation and potential future criminality. We are bound by that decision. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

“Probation is generally reserved for convicted criminals whose conditional release into society poses minimal risk to public safety and promotes rehabilitation. [Citations.] The sentencing court has broad discretion to determine whether an eligible defendant is suitable for probation and, if so, under what conditions. [Citations.] The primary goal of probation is to ensure ‘[t]he safety of the public . . . through the enforcement of court-ordered conditions of probation.’ (Pen. Code, § 1202.7.)” (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120.) “Accordingly, the Legislature has empowered the court, in making a probation determination, to impose any ‘reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, that amends may be made to

society for the breach of the law, for any injury done to any person resulting from that breach, and generally and specifically for the reformation and rehabilitation of the probationer . . . .’ (Pen. Code, § 1203.1, subd. (j).) Although the trial court’s discretion is broad in this regard, we have held that a condition of probation must serve a purpose specified in Penal Code section 1203.1. [Citations.]” (*Olguin, supra*, 45 Cal.4th at p. 379.)

We review conditions of probation for abuse of discretion. (*Olguin, supra*, 45 Cal.4th at p. 379.) “A condition of probation will not be held invalid unless it ‘(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality . . . .’ [Citation.]” (*Lent, supra*, 15 Cal.3d at p. 486, fn. omitted.) “This test is conjunctive—all three prongs must be satisfied before a reviewing court will invalidate a probation term. [Citations.] As such, even if a condition of probation has no relationship to the crime of which a defendant was convicted and involves conduct that is not itself criminal, the condition is valid as long [as] the condition is reasonably related to preventing future criminality. [Citation.]” (*Olguin, supra*, at pp. 379-380.)

The condition of probation at issue here requires defendant to “[k]eep the probation officer informed of place of residence, cohabitants and *pets*, and give written notice to the probation officer twenty-four (24) hours prior to any changes.” (Italics added.) A probation term should be given “the meaning that would appear to a

reasonable, objective reader.” (*People v. Bravo* (1987) 43 Cal.3d 600, 606.) Under the pet probation condition, defendant simply has to notify her probation officer of what pets may be present. Thus, at the outset, we note that defendant’s claim that this condition of probation “would give a probation officer authority to restrict or prohibit pets within a probationer’s household” is simply unfounded. In addition, in contrast to another of her claims, the challenged condition does not require her to “notify probation of her decision to own a pet,” and it does not “potentially subject [her] to arbitrary restrictions or prohibitions relating thereto . . . .”

It is undisputed that the condition requiring notification of the presence of pets has no relationship to vandalism, the crime of which defendant was convicted, and that ownership of most pets is not itself criminal. Defendant argues that regulating the type of pets within one’s home is not reasonably related to future criminality, and thus the notification condition is invalid under the test set forth in *Lent*. However, “[g]enerally speaking, conditions of probation ‘are meant to assure that the probation serves as a period of genuine rehabilitation and that the community is not harmed by the probationer’s being at large. [Citation.] These same goals require and justify the exercise of supervision to assure that the restrictions are in fact observed.’ [Citation.]” (*Olguin, supra*, 45 Cal.4th at p. 380.) “A condition of probation that enables a probation officer to supervise his or her charges effectively is, therefore, ‘reasonably related to future criminality.’” (*Id.* at pp. 380-381; see *People v. Kwizera* (2000) 78 Cal.App.4th 1238, 1240.) The pet probation condition is intended to facilitate the supervision of

defendant and to help ascertain whether she is complying with her other probation conditions. “Proper supervision includes the ability to make unscheduled visits and to conduct unannounced searches of the probationer’s residence. Probation officer safety during these visits and searches is essential to the effective supervision of the probationer and thus assists in preventing future criminality. Therefore, the protection of the probation officer while performing supervisory duties is reasonably related to the rehabilitation of a probationer for the purpose of deterring future criminality.” (*Olguin, supra*, at p. 381.) “Ensuring advance knowledge of the presence of pets at a probationer’s place of residence . . . is a reasonable means of facilitating unannounced searches of the probationer’s residence during these compliance visits.” (*Id.* at p. 382.)

Moreover, “[r]eporting the presence of pets to a probation officer is a simple task, imposes no undue hardship or burden, and is a requirement that clearly falls within the bounds of reason. Although some pets may be so innocuous that they could not possibly interfere with a probation officer’s performance of his or her duties, it would be unreasonable and impractical to leave it to a probationer to decide which pets could interfere with an officer’s supervisory duties, or to require a trial court to define the type, nature, and temperament of every animal that a probationer must report. On the other hand, it is reasonable to place the burden on a probationer to inform the probation officer which animals are present at his or her residence; the probation officer then can decide which precautions, if any, to take.” (*Olguin, supra*, 45 Cal.4th at p. 382.)

Pursuant to *Olguin*, we conclude that the trial court did not abuse its discretion in imposing the condition that defendant notify her probation officer of the presence of any pets at her place of residence. (*Olguin, supra*, 45 Cal.4th at p. 387.)

DISPOSITION

The judgment is affirmed.

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HOLLENHORST

J.

We concur:

RAMIREZ

P.J.

MCKINSTER

J.